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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Communications Assistance) CC Docket No. 97-213
for Law Enforcement Act)

**COMBINED COMMENTS AND PETITION FOR EXTENSION OF TIME
OF BELLSOUTH CORPORTION**

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SUMMARY

The Commission should grant a blanket extension of CALEA's October 25, 1998 Section 103 compliance date for all affected carriers. The Commission should toll the October 25, 1998 Section 108 compliance date during the pendency of this proceeding in the event that the Commission requires longer than the remaining time in the compliance date to resolve this issue.

A number of carrier and carrier associations have filed for extensions of the October 25, 1998 Section 103 compliance date. Processing the hundreds of individual extension requests of local exchange carriers alone would unnecessarily consume the Commission's limited time and resources. The factors supporting an extension apply equally to all carriers, most importantly, the unavailability of any assistance capability products in the market place as a result of the delayed release of law enforcement's capacity requirements and the delay in adopting a technical assistance capability standard.

If the Commission is not inclined to grant a blanket extension to all affected carriers, BellSouth requests that the Commission grant BellSouth an extension applicable to all BellSouth companies subject to CALEA requirements. There is no switch-based or network-based CALEA-compliant product available to BellSouth or any of its affiliated companies. Because compliance with CALEA's assistance capability requirements under Section 103 is not reasonably achievable through the application of commercially available technology within the compliance period, BellSouth has demonstrated its entitlement to an extension.

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In response to the Commission's Public Notice, DA 98-762, released April 20, 1998,¹ BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Personal Communications, Inc., and BellSouth Wireless Data, L.P., on behalf of themselves and their affiliated companies, by counsel ("BellSouth"), file these comments supporting a blanket extension of CALEA's October 25, 1998, Section 103 compliance date (CALEA Compliance Date) for all affected carriers. In the event the Commission does not provide blanket relief for all affected carriers from the CALEA Compliance Date, BellSouth requests that the Commission treat these Comments as a BellSouth-specific request for an extension of the CALEA Compliance Date.

I. INTRODUCTION

The Communications Assistance for Law Enforcement Act² was enacted October 25, 1994, with its assistance capability and capacity requirements expected to be effective and

¹ *Communications Assistance for Law Enforcement Act*, CC Docket 97-213, *Public Notice*, DA 98-762 (released April 20, 1998) (*Public Notice*).

² *Communications Assistance for Law Enforcement Act* (CALEA), Pub. L. No. 103-414, 108 Stat. 4279 (1994) (codified as amended in 18 U.S.C. and 47 U.S.C.).

available four years later on October 25, 1998. At least four critical events have occurred since the enactment of CALEA which have affected the industry's implementation of the law. The FBI has occasioned delays in several critical areas of implementation of the law including its delay of the industry standard setting process and its release of a final capacity notice which was almost three years late. The Telecommunications Act of 1996 has changed the competitive environment in the industry and there have been many new entrants. Only approximately 100 million of the 500 million dollars authorized for cost reimbursement for CALEA has been appropriated as the government completes the last fiscal year of the authorization. Finally, virtually all carrier equipment and facilities currently being deployed in carrier networks are the same equipment and facilities which were being deployed prior to January 1, 1995, since the technology to make them "CALEA capable" has not yet been developed nor designed into such equipment and facilities.

II. PROCEDURAL BACKGROUND

On July 16, 1997, the Cellular Telecommunications Industry Association (CTIA) submitted a petition for rulemaking requesting the FCC to establish standards to implement the assistance capability requirements of CALEA (CTIA Petition). The CTIA Petition recommended, among other things, that the Commission postpone the CALEA Compliance Date until two years after the adoption of Telecommunications Industry Association (TIA)/Committee T1 J-STD-025 as the technical standard for CALEA's assistance capability requirements. On October 10, 1997, the Commission issued a Notice of Proposed Rulemaking in which it proposed new rules to implement CALEA.³ The *CALEA NPRM* was not issued to address technical

³ *Communications Assistance for Law Enforcement Act*, CC Docket 97-213, Notice of Proposed Rulemaking (October 10, 1997)(*CALEA NPRM*).

capability standards issues, and stated that it was not clear whether requests for extension of the CALEA Compliance Date would be forthcoming.

On December 5, 1997, TIA and Committee T1, sponsored by the Alliance for Telecommunications Industry Solutions (ATIS), announced the adoption and joint publication of an Interim Industry Standard. This standard (J-STD-025) defines services and features to support lawfully authorized electronic surveillance and the interfaces to deliver intercepted communications and call-identifying information to a law enforcement agency in order to facilitate carrier compliance with CALEA's assistance capability requirements.⁴ One-week later, interested parties filed their comments to the *CALEA NPRM* on December 12, 1997. Comments overwhelmingly cited the CTIA Petition in their comments, and requested that the Commission act to extend the CALEA Compliance Date.⁵

The *Public Notice* recounts six procedural events that have occurred in this docket since the pleading cycle to the *CALEA NPRM* closed with the filing of reply comments on February 11, 1998: the Center for Democracy and Technology (CDT) March 26, 1998, Petition challenging the Interim Industry Standard as going too far (CDT Petition); The Federal Bureau of Investigation (FBI) and Department of Justice (DOJ) deficiency petition challenging the Interim Industry Standard as not going far enough (FBI/DOJ) Petition; the FBI/DOJ March 27, 1998, Joint Motion to Dismiss the CTIA Petition; the March 30, 1998, Petition for Extension of the CALEA Compliance Date filed by AT&T Wireless Services Inc., Lucent Technologies Inc., and Ericsson Inc.; the April 2, 1998, TIA Petition for Rulemaking asking the Commission to resolve the over inclusive/under inclusive dispute as framed by the CDT and FBI/DOJ Petitions; and the CTIA, Personal Communications Industry Association (PCIA) and United States

⁴ *Public Notice* at 2.

Telephone Association (USTA) April 9, 1998, Petition to resolve the standards dispute, toll the CALEA Compliance Date during rulemaking and grant an industry-wide extension to allow adequate time to implement any revised standard.

The *Public Notice* sought comments on three aspects of the issues raised in the instant docket: extension of the CALEA Compliance Date (comments due May 8, 1998); comments on the scope of the assistance capability requirements necessary to satisfy obligations imposed by CALEA, and issues arising out of the CDT, FBI/DOJ and TIA Petitions (comments due May 20, 1998); and comments on the FBI/DOJ Joint Motion to Dismiss the CTIA Petition (comments due May 20, 1998). Since release of the *Public Notice* on April 20, 1998, a number of other entities have requested an extension of the CALEA Compliance Date.⁶ The Commission has not issued a public notice seeking comment on these post-*Public Notice* petitions for extension. However, the Commission should consider these and any subsequently filed petitions, together with the comments it receives on May 8, 1998 and relevant portions of those which it has already received in response to the *CALEA NPRM* addressing extension of the CALEA Compliance Date, as overwhelming evidence that an extension order that applies to all carriers subject to the CALEA Compliance Date is warranted. To do otherwise would require each of the thousands of affected carriers to file separate extension requests and for the Commission to process each request independently.

⁵ See, eg., Comments of TIA, USTA, PCIA and CTIA.

⁶ AirTouch Petition for an Extension of the CALEA Capability Assistance Compliance Date (filed May 4, 1998) (AirTouch Petition); Ameritech Petition for Extension of Time (filed April 24, 1998)(Ameritech Petition); Powertel Petition for an Extension of Time to Comply with the Capability Requirements of Section 103 of the Communications Assistance for Law Enforcement Act (filed April 23, 1998)(Powertel Petition); USTA Petition for Extension of Compliance Date (filed April 24, 1998)(USTA Petition).

III. BELLSOUTH'S INTEREST AND STANDING

BellSouth has a direct interest in this proceeding. As set forth in its December 12, 1997, comments to the *CALEA NPRM*, BellSouth has a long history of cooperating with law enforcement and of active participation in law enforcement's efforts to implement CALEA, both individually and through organizations such as CTIA, the Personal Communications Industry Association (PCIA) and the United States Telephone Association (USTA).⁷ Since collaborative efforts between the government and the telecommunications industry began in 1992, BellSouth has actively supported industry efforts to develop publicly available technical requirements designed to facilitate law enforcement's ability to perform lawful surveillance. From 1992 until 1997, BellSouth has actively participated in the joint committee that eventually became the Electronic Communications Service Providers (ECSP) committee of ATIS. Subsequently, as ATIS Committee T1 and TIA TR 45.2 began standardization work on a Lawfully Authorized Electronic Surveillance (LAES) standard, BellSouth wireline and wireless personnel have contributed to the development of the document and chaired a T1S1 Ad Hoc group dealing with LAES. BellSouth personnel continue to support work in TR 45.2 to develop an Enhanced Surveillance Standard intended to standardize additional capabilities that are viewed by the industry as beyond the scope of CALEA, but still are desired by law enforcement. Moreover, a number of BellSouth companies or affiliates are or may become subject to CALEA's requirements. BellSouth has been working diligently with its vendors to secure CALEA-compliant technology. However, as a result of law enforcement's dilatoriness in establishing a final capacity notice (which still leaves many fundamental questions unanswered), and because of challenges to the Interim Industry Standard, it is impossible for BellSouth's vendors to

⁷ BellSouth Comments at 3-4 (filed December 12, 1997).

develop, manufacture or obtain CALEA-compliant technology before the CALEA compliance date.

IV. AN EXTENSION OF THE CALEA COMPLIANCE DATE IS WARRANTED

Ten months ago the CTIA Petition made it abundantly clear that an extension of the CALEA Compliance Date is warranted. Five months ago the sheer weight of comments to the CALEA NPRM underscored the necessity for such an extension.⁸ The ever increasing number of individual carrier petitions that are being filed attest to the fact that the factors warranting an extension apply more or less equally to a large number of telecommunications carriers. Law enforcement itself concedes that there will be no switch-based solution for CALEA assistance capability requirements in place in time to meet the CALEA Compliance Date, and none of the record evidence concerning the lack of commercially available technical solutions, whether switched-based or network-based, has been controverted. The record in this docket clearly establishes that neither switch manufacturers nor other manufacturers currently have the technology available to meet CALEA requirements, nor do manufacturers anticipate having CALEA-compliant technology completed by the current deadline of October 25, 1998.

Section 107 (c)(2) of CALEA states that the Commission has authority to grant an extension “if the Commission determines that compliance with the assistance capability requirements under section 103 is not reasonably achievable through application of technology available within the compliance period.”⁹ It is simply not possible to conclude, on the basis of the record developed in this proceeding, that compliance with the assistance capability requirements under section 103 is reasonably available through application of technology

⁸ Ameritech Comments at 9-10; BellSouth Comments at 18-19; SBC Comments at 24; USTA at 13-14; AT&T Comments at 5-6; AirTouch Comments at 12; PageNet Comments at 14-15; Motorola Comments at 11.

commercially available to any carrier within the compliance period. The Commission must determine that an extension of the CALEA Compliance Date is, under the circumstances, warranted for all carriers.

V. AN EXTENSION SHOULD APPLY TO ALL CARRIERS

The petitions that have been filed to date requesting an extension of the CALEA Compliance Date demonstrate that the factors supporting an extension apply equally to large numbers of telecommunications carriers. In the first place, three of the largest nonprofit corporations representing wireline and wireless carriers, CTIA, PCIA and USTA, have reiterated their request for an industry wide stay of the CALEA Compliance Date.¹⁰ CTIA membership encompasses providers of commercial mobile radio services (CMRS), including 48 of the 50 largest cellular providers and personal communications services (PCS) providers, and manufacturers of CMRS equipment.¹¹ PCIA is a nearly 50 year-old international trade association representing PCS providers, paging providers, mobile data service providers, communications site managers, equipment manufactures and other suppliers of products and services to the wireless industry.¹² USTA represents approximately 1,000 small, mid-size and large local exchange telephone companies that provide over 95% of the local telephone company provided access lines in the country.¹³

⁹ 47 U.S.C. § 1006(c)(2), *as codified*.

¹⁰ CTIA/PCIA/USTA Petition at 11-12. CTIA, of course, first requested an extension on July 16, 1997. CTIA Petition at 12. CTIA, PCIA and USTA supported an extension in their comments to the CALEA NPRM filed on December 12, 1997 and February 11, 1998. USTA recently filed an individual petition for extension on behalf of its member companies. *See supra*. n. 10.

¹¹ CTIA Petition at 2, n.5.

¹² *Id.* at 2, n.6.

¹³ *Id.* at 2, n.7.

The April 9, 1998 CTIA/PCIA/USTA Petition alone demonstrates that the factors supporting an extension apply equally to a large number of carriers, because it is filed collectively on behalf of hundreds of wireline and wireless carriers representing all industry segments. Moreover, the individual petitions filed to date underscore the commonality of extension factors. Chief among these factors are the development history of the current Interim Industry Standard, the oft-recounted procedural history of the FBI's delay in promulgating its assistance capability requirements, and the consequent lack of availability of any assistance capability product or any network-based solution.

The current disagreement between law enforcement, citizens' privacy rights advocates and industry over the scope of the technical standard alone justifies an extension of the CALEA Compliance Date. BellSouth's key vendors have repeatedly explained that it is essential that there be a final standard to which they can design CALEA-compliant technology. At the present time, there is no stable standard to design to. This disagreement is not likely to be resolved soon, as the pleading cycle on these issues does not close until June 5, 1998.¹⁴ The hardware and software necessary for compliance with the capacity requirements are not commercially available and, in all likelihood, will not be available within the next six months.¹⁵ In its Implementation Report filed with Congress on January 26, 1998, the FBI provided a timetable that indicated that no switch-based solution for CALEA compliance would be available by October 25, 1998.¹⁶ Additionally, although some manufacturers of the switch-based solutions

¹⁴ *Public Notice* at 4.

¹⁵ Communications Assistance for Law Enforcement Act (CALEA), Implementation Report, Federal Bureau of Investigation of the Department of Justice, January 26, 1998. (FBI Report).

¹⁶ FBI Report at 18.

could provide a partial solution for CALEA compliance in fourth quarter, 1998, no fully compliant switch-based solution would be available before the year 2000.¹⁷

AT&T Wireless, Lucent Technologies and Ericsson, Inc. filed a Petition for Extension of Time with the Commission requesting an extension of time due to the inability to manufacture and implement an acceptable solution which adheres to Section 103 of CALEA.¹⁸ Lucent and Ericsson state that despite concerted efforts to develop a solution that complies with the current interim standard, significant resources will be wasted if they continue manufacturing efforts at this point.¹⁹ Clearly, until such time as the Commission determines what the capability requirements are under CALEA, the manufacturers cannot move forward with further development, except at great risk and expense.²⁰

Finally, until a final capacity notice had been issued, manufacturers were incapable of implementing CALEA compliant standards. CALEA required that capacity requirements would be released within one year of the passage of CALEA.²¹ However, it was not until March 28, 1998 that the FBI released its final capacity notice, almost three years after the passage of CALEA.²² Without the final capacity notice, manufacturers were unable to determine the scope of capacity numbers to design into their switch-based solutions.²³ Moreover, the final capacity

¹⁷ *Id.* As Ameritech notes, the so called “Bell Emergis” solution is not an option. *Infra* n. 32 and accompanying text.

¹⁸ AT&T Petition at 2.

¹⁹ *Id.* at 9.

²⁰ Ameritech Petition at 6.

²¹ 47 U.S.C. § 1003(a).

²² TIA Petition at 9; CTIA Petition at 10, 14; USTA Petition at 4; CDT Petition at 9; Ameritech Petition at 8.

²³ Ameritech Petition at 8.

notice still requires clarification on a number of issues raised in the second capacity notice that the FBI never resolved.²⁴

All of the foregoing factors are common and applicable to all carriers. The uncertainty surrounding the status of the Interim Industry Standard and the FBI's final capacity requirements warrant an extension of the compliance deadline for all carriers. The Commission should, therefore, grant a "blanket" or "universal" extension to all carriers by category.²⁵ The Commission can act now on its own, or in response to filings from industry associations on behalf of membership.²⁶ BellSouth also supports AT&T Wireless' request that the Commission expressly toll the CALEA compliance date during the pendency of this proceeding in the event that the Commission requires longer than the remaining time in the compliance period to decide this issue.²⁷

²⁴ USTA Petition at 4.

²⁵ CTIA Petition at 12-13, fn. 30.

²⁶ CTIA Petition at 12.

²⁷ AT&T Petition at 11.

VI. THE COMMISSION SHOULD GRANT BELL SOUTH AND ITS AFFILIATED COMPANIES AN EXTENSION OF THE CALEA COMPLIANCE DATE UNTIL OCTOBER 25, 2000

BellSouth has previously requested that the Commission extend the CALEA Compliance Date for all carriers. In addition, BellSouth is a member of USTA, CTIA, and PCIA which have requested that the Commission take such action. Most recently, on April 24, 1998, four days following release of the *Public Notice*, USTA filed a Petition for Extension of Compliance Date on behalf of its member companies. BellSouth believes that the most timely, effective and efficient course for the Commission to take would be to grant a blanket extension to all carriers subject to the CALEA Compliance Date. If the Commission does not take such an action, BellSouth respectfully requests that the Commission treat these comments as BellSouth's individual petition pursuant to Section 107(c) of CALEA for a two-year extension of the CALEA Compliance Date.

A BellSouth specific extension is necessary because compliance with CALEA's assistance capability requirements under Section 103 is not reasonably achievable through the application of commercially available technology within the compliance period. As noted above, the FBI Report filed with Congress earlier this year set forth a timetable demonstrating that no switch-based solution for CALEA compliance will be available by the CALEA Compliance Date.²⁸ In addition, as TIA's uncontroverted comments to the *CALEA NPRM* established, standard industry practice requires 24 to 30 months of development before manufacturers are able to release new feature software.²⁹ Two switch manufacturers, Lucent and Ericsson, are on record as stating that they are unable to manufacture and implement an acceptable solution which

²⁸ See *supra*, n. 21.

²⁹ TIA Comments at 9 (filed December 12, 1997).

is CALEA compliant.³⁰ BellSouth has investigated other potential solutions and is unaware of any network-based solution. Ameritech has determined that the “Bell Emergis solution,” the only potential network-based cited by the FBI, had significant technical problems that would require substantial modification before it could operate with the existing network and be compliant with CALEA.³¹ The Commission has yet to receive comments arising out of the CDT, TIA and FBI Petitions concerning the appropriate scope of the Interim Technical Standard. Only when these issues are resolved will manufacturers be in a position to begin to develop the necessary products for carrier deployment.

VII. CONCLUSION

The record in this proceeding demonstrates that a general extension of the CALEA Compliance Date, applicable to all carriers, is warranted. The Commission should grant such an extension. In the alternative, the Commission should grant BellSouth and its affiliated companies an extension of the CALEA Compliance Date until October 25, 2000, with leave to seek additional extensions under Section 103 as may be warranted and demonstrated as necessary to fully comply with CALEA in a cost effective fashion.


³⁰ AT&T Petition at 9.


³¹ Ameritech Petition at 7.

Respectfully submitted,

BELLSOUTH CORPORATION


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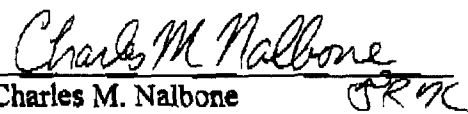
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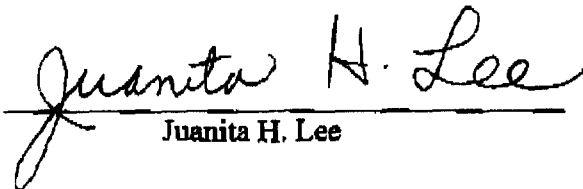
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CERTIFICATE OF SERVICE

I do hereby certify that I have this 8th day of May 1998, served all parties to this action with a copy of the foregoing **COMMENTS AND PETITION FOR EXTENSION OF TIME** by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.



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